

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair  
Commissioner  
Commissioner  
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In the Matter of the Otter Tail Power Company  
Application For Certificate of Need for a 115  
Kilovolt Transmission Line Between Appleton  
and Canby Substations

ISSUE DATE: August 1, 2006

DOCKET NO. E-017/CN-06-677

ORDER GRANTING EXEMPTIONS AND  
APPROVING A NOTICE PLAN AS  
MODIFIED

**PROCEDURAL HISTORY**

In 2005, Otter Tail Power Company (OTP) stated its intention to build a 42-mile, 115 kilovolt (kV) transmission line connecting its Appleton substation and its Canby substation through the southwestern Minnesota counties of Swift, Lac Qui Parle and Yellow Medicine, and passing near the counties of Big Stone and Chippewa.<sup>1</sup>

On May 15, 2006, OTP started the process of obtaining permits for this line by asking the Commission to approve OTP's plan for giving public notice of this proposal, and also asking the Commission to relieve it of certain filing obligations that OTP argues are not relevant to the proposal.

By June 5, 2006, the Commission had received comments from the Minnesota Department of Commerce (the Department) and Laura and John Reinhardt.

On June 8, 2006, the Commission issued its ORDER VARYING RULE AND EXTENDING TIME LINE FOR COMMISSION ACTION, providing time for the Commission to give adequate consideration to the filed comments.

On June 26, 2006, OTP replied to the parties' comments.

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<sup>1</sup> See *In the Matter of the 2005 Minnesota Biennial Transmission Filing*, Docket No. E-999/TL-05-1739, OTP's filing (Issue No. 2003-WC-N10 "Appleton-Canby Rebuild").

The Commission met on July 20, 2006, to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **I. LEGAL BACKGROUND**

To build a large energy facility in Minnesota, a person must first demonstrate that the facility is needed. Minn. Stat. § 216B.243, subd. 2. In addition, the person must demonstrate that the facility's site or route minimize adverse human and environmental consequences while maintaining the electric system's reliability. Minn. Stat. § 116C.53, subd. 1. The term "large energy facility" includes any transmission line with at least ten miles in Minnesota, and with a capacity of at least 100 kV. Minn. Stat. § 216B.2421, subd. 2(3). Because OTP's proposed transmission line would have more than 100 kV of capacity and is more than ten miles in length, it qualifies as a large energy facility.

Minnesota Rules chapter 7849 sets forth the requirements for making an application for a Certificate of Need, as well as the ultimate criteria for demonstrating need. Minnesota Rules chapter 4400 sets forth the requirements for obtaining a site or route permit. To obtain either a Certificate of Need or a site or route permit, an applicant must prepare a plan for notifying people who might be affected by the proposed facility. Minn. Rules, parts 4400.1200, 4400.1350 and 7829.2550.

In its filing, OTP offers a plan for giving notice of its proposal. In addition, OTP seeks exemptions from some of the Certificate of Need application requirements. The Commission grants exemptions when "the data requirement is unnecessary to determine the need for the proposed facility or may be satisfied by submitting another document." Minn. Rules, part 7849.0200, subp. 6.

### **II. EXEMPTIONS FROM CERTIFICATE OF NEED FILING REQUIREMENTS**

#### **A. OTP's Request for Exemptions**

OTP requests exemptions from several filing requirements:

**Minnesota Rules, part 7849.0220, subpart 3** states that where multiple entities propose to own a new large energy facility jointly, each owner should provide the data required for the Certificate of Need application. OTP proposes to build a transmission line that would connect to a substation owned by Missouri River Energy Services (MRES), but OTP states that MRES would have no ownership interest in the transmission line itself. While OTP will provide some information about how the proposed line will benefit MRES customers, as discussed below, OTP asks the Commission to rule that it need not provide Certificate of Need data reflecting MRES's system generally.

**Minnesota Rules, part 7849.0270, subparts 1 and 2** direct an applicant to predict both the amount of electricity its customers will consume and the maximum amount customers will demand simultaneously (“peak demand”). Rather than provide data pertaining to its entire service area, OTP proposes to provide this data only with regard to customers that will benefit from the new line.

Specifically, OTP proposes to provide data regarding customers served by the Appleton, Benson, Canby, Dawson, Graceville and Ortonville substations. These customers are in the counties of Big Stone, Chippawa, Lac Qui Parle, Swift and Yellow Stone, in a region extending from Ortonville on the west to Benson on the east, and from Appleton on the north to Canby on the south. While some of the customers in this region receive electricity from other electric utilities, OTP proposes to provide data regarding all the customers that will benefit from the line.

OTP also asks to be relieved of the obligation to provide average system weekday load factors for each customer class for each month, as required by part 7849.0270, subpart 2.F. Arguing that this data is not relevant to evaluating the need for the proposed transmission line, OTP asks the Commission to exempt OTP from the need to comply with this requirement.

**Minnesota Rules, part 7849.0270, subpart 2.B.** directs the applicant to provide its forecasted data disaggregated into various consumer groups (residential, commercial, industrial, farming, etc.). OTP acknowledges that this level of detail may prove relevant when an applicant proposes to build a large generating plant serving a populous region. Here, however, OTP proposes to build a transmission line that would benefit a region with fewer than 25,000 people. Under these circumstances, OTP argues that the burden of disaggregating the relevant data into customer groups is out of proportion to its benefit in evaluating the need for the line. As a substitute, OTP proposes to provide the relevant data for all customer groups combined.

**Minnesota Rules, part 7849.0280** directs the applicant to describe its capacity for meeting customer demand for electricity throughout its system, and the extent to which the new facility would increase that capacity. Rather than provide data pertaining to its entire service area, OTP proposes to provide data pertaining only to the area that will benefit from the new line. Also, OTP asks to be exempt from providing the data requested in items B. through G. and item I. because those data pertain to demonstrating the need for a generator, not a transmission line.

Finally, part 7849.0280 directs an applicant to provide data regarding its capacity for both the summer season and the winter season of each year of a forecasted period. OTP says that customer demand for electricity in the Appleton/Canby region peaks in the summer, and the growth in this summer peak is largely driving the need for building the proposed line. Because OTP cannot see how knowledge of winter peak demand levels would assist the Commission in evaluating the need for the new transmission line, OTP asks to be exempted from the requirement to provide forecasts of peak winter capacity.

**Minnesota Rules, part 7849.0290** directs an applicant to discuss the extent to which the applicant has promoted – and will continue to promote – energy conservation on its system as a substitute for building new facilities. OTP argues that energy conservation programs outside of the Appleton/Canby region have little effect on the growth of demand within the region. Consequently OTP asks to be exempted from providing information on conservation programs except to the extent that they pertain to demand within the Appleton/Canby region.

**B. The Department’s Comments**

The Department has no objection to OTP’s exemption requests and proposals for providing substitute data, reasoning that granting OTP’s requests would not impair its ability to evaluate the need for the proposed line.

**C. Comments of John and Laura Reinhardt**

Similarly, the Reinhardts raised no specific objection to any of OTP’s exemption requests.

Rather, the Reinhardts argue that citizens should be informed about which rules govern OTP’s application and which rules no longer apply so that citizen comments on OTP’s application would be guided to the operative rules. To this end, the Reinhardts ask that OTP’s Notice identify the statutes and rules that will govern its application, and describe the rules from which OTP has received exemptions.

**D. Commission Analysis and Action Regarding OTP’s Exemption Requests**

As noted above, the Certificate of Need rules direct applicants to provide data that might be relevant to demonstrating the need for a broad range of possible facilities. OTP argues that certain of these requirements are not relevant to demonstrating the need for OTP’s proposed transmission line, and no party disagrees. Having analyzed OTP’s exemption requests, the Commission finds them reasonable.

Where an applicant seeks to build a transmission line, for example, the Commission is willing to grant the applicant an exemption to filing requirements that pertain only to electric generators.<sup>2</sup> When a proposal is driven by the need to meet the peak demand for electricity in summer, the Commission is willing to exempt an applicant from the need to forecast winter peak demand levels. Similarly, if data regarding the applicant's average system weekday load factors for each customer class for each month is not relevant to analyzing the need for a transmission line, the Commission will exempt an applicant from the duty to file this data.<sup>3</sup> And where the need for a transmission line is driven by growing demand within a specific region, the Commission finds it reasonable to analyze data regarding demand, energy consumption, transmission capacity and conservation programs pertaining to that region, rather than pertaining to the applicant's entire service area.<sup>4</sup>

Data regarding the anticipated demand of distinct customer groups can prove relevant for purposes of, for example, developing targeted conservation programs. But where the burdens of acquiring this data outweigh the data's benefit for analyzing the need for a given project, the Commission is willing to accept aggregated customer demand data as a substitute.

Finally, the fact that an applicant's proposed transmission line will connect to another utility's substation does not trigger the need for the applicant to include data from that other utility in its application.<sup>5</sup> The Commission concludes, therefore, that Minnesota Rules, part 7849.0220, subpart 3 does not require OTP to include MRES data in its application generally, although the Commission will accept OTP's proposal to analyze data regarding all the customers that will benefit from the proposed transmission line, including MRES customers.

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<sup>2</sup> See, for example, *In the Matter of the Application of Great River Energy for a Certificate of Need for a High Voltage Transmission Line*, Docket No. ET-2/CN-02-536, ORDER GRANTING AND DENYING EXEMPTION REQUESTS AND CLARIFYING FILING REQUIREMENTS (July 2, 2002) (Plymouth/Maple Grove Exemption Order) at 4-5; *In the Matter of the Request by Great River Energy for a Certificate of Need for a High-Voltage Transmission Line from the Mud Lake Substation to the Wilson Lake Substation*, Docket No. ET-2/CN-06-367, ORDER GRANTING AND DENYING EXEMPTIONS, APPROVING A NOTICE PLAN AS MODIFIED, AND CONSOLIDATING DOCKETS (May 15, 2006) (Wilson Lake Exemption Order).

<sup>3</sup> See the Wilson Lake Exemption Order, *supra*.

<sup>4</sup> See Minn. Rules, part 7849.0220, subpart 2; Plymouth/Maple Grove Exemption Order, *supra*.

<sup>5</sup> See the Wilson Lake Exemption Order, *supra*.

For the foregoing reasons, therefore, OTP's exemption requests will be granted. But it should be understood that this decision does not preclude any person from recommending, or the Commission from requiring, the submission of additional information before finding the Certificate of Need application substantially complete. Moreover, no finding that an application is substantially complete, with or without additional information, would preclude the development of additional information through discovery. Ultimately the burden of proving need for the proposed facility lies with the applicant. The exemptions granted here relate to filing requirements only; they are not findings that the information at issue may not prove essential to finding need. Such substantive findings would require careful examination of the merits of the application.<sup>6</sup>

The Commission will address the Reinhardts' concern about the content of OTP's notices below.

### **III. OTP's NOTICE PLAN**

#### **A. OTP's Filing**

OTP intends for its proposed notice plan to satisfy the requirements of both the Certificate of Need process (part 7829.2550) and the route permitting process (part 4400.1350). OTP provides a draft notice of the proposed transmission line, the draft notice with additional language for announcing a public meeting, and a map of the proposed project area. In accordance with Minnesota Rules, part 7829.2550, OTP proposes different techniques for communicating with different audiences:

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<sup>6</sup>*In the Matter of the Application by Koch Refining Company for Certification of the Pine Bend Cogeneration Project*, Docket No. IP-2/CN-95-1406, ORDER GRANTING EXEMPTIONS FROM FILING REQUIREMENTS (February 16, 1996); *In the Matter of the Application of Rapids Power LLC for a Certificate of Need for its Grand Rapids Cogeneration Project*, Docket No. IP-4/CN-01-1306, ORDER GRANTING EXEMPTIONS FROM FILING REQUIREMENTS, PERMITTING EXPEDITED FILING, AND EXTENDING PERIOD TO DETERMINE ADEQUACY OF FILING (October 9, 2001) at 3-4; *In the Matter of the Application of Great River Energy for a Certificate of Need for a High Voltage Transmission Line*, Docket No. ET-2/CN-02-536, ORDER GRANTING AND DENYING EXEMPTION REQUESTS AND CLARIFYING FILING REQUIREMENTS (July 2, 2002) at 7; *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy and Dairyland Power Cooperative for a Certificate of Need for a High Voltage Transmission Line*, Docket No. ET-3, E-002/CN-02-2052, ORDER GRANTING EXEMPTION IN PART AND REQUIRING SUPPLEMENTARY FILING AND NOTICE (April 8, 2003) at 8; *In the Matter of the Application for Certificates of Need for Three 115 kV Transmission Lines in Southwestern Minnesota*, Docket No. E-002/CN-06-154, ORDER GRANTING EXEMPTIONS (July 24, 2006) at 7.

- Direct mail notice for landowners reasonably likely to be affected by the proposed transmission line.
- Direct mail notice for all addresses within the area reasonably likely to be affected by the proposed transmission line.
- Direct mail notice for tribal governments and the governments of towns, statutory cities, home rule charter cities and counties whose jurisdictions are reasonably likely to be affected by the proposed transmission line.
- Newspaper notice for members of the public in areas reasonably likely to be affected by the proposed transmission line.

## **B. The Department's Comments**

Having reviewed OTP's notice plan, the Department finds no fault with OTP's efforts to identify people to receive notice or the proposed means for providing that notice. But the Department recommends modifying the content of the notices to include additional information. To fulfill the Certificate of Need notice requirements of Minnesota Rules part 7829.2550 the Department recommends that OTP add the following information:

- A description of the general right-of-way requirements for a line of the size and voltage proposed.
- The address of the Commission's site on the World Wide Web.
- A statement that requests for certification of high-voltage transmission lines are governed by Minnesota law, including Minnesota Rules chapters 4410.

In addition, to fulfill the route permitting notice requirements of Minnesota Rules part 4400.1350 the Department recommends that OTP add language stating the following:

- The application will be considered pursuant to the alternative review process applicable to smaller or less controversial projects, Minnesota Rules parts 4400.2000 - .2950.
- The alternative process has a six month timeline for review and decision.
- Anyone wanting to be included on the Department's mailing list used to distribute project notices must contact the Department's project manager or register on the Commission's site on the World Wide Web.

Finally, the Department notes that it is available to work with OTP in reviewing a draft route permit application, scheduling public meetings and reviewing draft notices.

### **C. Comments of John and Laura Reinhardt**

The Reinhardts also generally support OTP's proposed notice plan but recommend a few changes.

First, while the Reinhardts approve of OTP's plan to hold informational "open houses" before filing a Certificate of Need application, the Reinhardts note that OTP fails to say how OTP would publicize the open houses. The Reinhardts recommend that OTP publish notice in the local newspaper as well as mail notice to landowners and local and tribal governments in the affected area.

Second, the Reinhardts propose various changes to the notice language. For example, given that OTP proposes to build its new line within the corridor of an existing line, the Reinhardts object to OTP's unexplained statement that it may seek to acquire land through the use of eminent domain. The Reinhardts also echo two of the Department's recommendations: They support including a description of the general right-of-way requirements for a line of the size and voltage proposed. And they support clarifying that people who wish to continue receiving mailings regarding the proposed transmission line must ask the Department or the Commission to remain on the mailing lists. Finally, as noted above, the Reinhardts argue that the notice should include a statement indicating the rule provisions for which the applicant received an exemption.

Third, the Reinhardts ask OTP to document when it has fully implemented its notice plan. Specifically, the Reinhardts recommend that OTP provide a list of the names and addresses of the landowners and residents to whom OTP had mailed notice, as well as a copy of the notice itself.

### **D. OTP's Reply Comments**

In reply, OTP acknowledged the recommendations of the parties and agreed to work with the parties in developing its notice language and plans.

### **E. Commission Analysis and Action Regarding OTP's Notice Plan**

The Commission has reviewed OTP's proposed notice and notice plan and finds that, as modified by the suggestions of the Department and the Reinhardts, they are reasonable.



The Commission finds merit in the Reinhardts' recommendations for promoting greater public education. This includes their recommendations for publicizing OTP's open houses<sup>7</sup> and for ensuring that citizens know which filing requirements continue to govern an applicant's proposal and which requirements no longer apply. In addition, the Commission finds merit in obtaining documentation from OTP demonstrating that its notice plan has been implemented.<sup>8</sup> These recommendations will all be adopted.

More generally, the Commission finds that adopting the Department's and the Reinhardts' recommendations regarding the content of the notice would promote greater public education, consistent with the policies underlying the Commission's statutes and rules. And the Commission finds merit in the Department's offer to continue to work with OTP in finalizing its notice plan, and in OTP's willingness to work with the parties. The Commission will approve this arrangement as well.

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<sup>7</sup> See, for example, *In the Matter of the Request by Great River Energy for a Certificate of Need for a High-Voltage Transmission Line from the Mud Lake Substation to the Wilson Lake Substation*, Docket No. ET-2/CN-06-367.

<sup>8</sup> See *In the Matter of the Application of Otter Tail Power Company and Others for High-Voltage Transmission Facilities in Western Minnesota*, Docket No. ET-6131, ET-2, ET-6130, ET-10, ET-6444, E-107, ET-9/CN-05-619, ORDER APPROVING NOTICE PLAN AND REQUIRING PROOF THAT PLAN HAS BEEN CARRIED OUT (June 24, 2005); *In the Matter of Notice Plans for Certification of Transmission Facilities*, Docket No. ET-2, E-015/TL-05-867, ORDER APPROVING NOTICE PLANS, AS REVISED (August 25, 2005); *In the Matter of the Application of Northern States Power Company (d/b/a Xcel Energy) for a Certificate of Need for Three 115 kV Transmission Lines in Southwestern Minnesota*, Docket No. E-002/CN-06-154, ORDER APPROVING NOTICE PLAN AND REQUIRING COMPLIANCE FILING (April 28, 2006).

**ORDER**

1. OTP's request for exemptions from the Certificate of Need filing requirements is granted as set forth above.
2. OTP's notice plan is approved as modified to reflect the recommendations of the parties. OTP shall work with the parties in finalizing the notice plan and notice language.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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